

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 201 of 1998

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?  
1 to 5 : NO

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MAHENDRASINH THAKORBHAI RATHOD

Versus

RANGE FOREST OFFICER

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Appearance:

M/S THAKKAR ASSOC. for Petitioner  
NOTICE SERVED for Respondent No. 2  
MR SR DIVETIA APP for Respondent No. 3

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CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 22/06/98

ORAL JUDGEMENT

Rule returnable today. Learned APP Mr. Divetia appears and waives service of rule on behalf of respondents.

2. This petition arises out of the forest offence

alleged to have been committed by the present petitioner by transporting forest produce without permit in his vehicle No. DN-09-8431. It is the claim of the petitioner that on the date of offence, the said truck was stolen by somebody for which a complaint was lodged at Silvass Police Station, which is registered as CR No. I-149/97. The said truck was thereafter found abandoned on the highway with the forest produce viz., Kher wood, for which forest offence is registered as aforesaid. The confiscation proceeding in this regard is pending before the Deputy Conservator of Forests, Valsad (South) - respondent no. 2 herein.

3. Pending the said proceedings, petitioner made an application on 23rd September, 1997 for interim release of vehicle which was seized as aforesaid. Mr. Trimizi has submitted that the confiscation proceedings have not proceeded further and petitioner's application for interim release of the vehicle has also not been decided though nearly nine months have passed. He, therefore, prayed that the said truck be released on suitable terms and conditions.

4. Mr. Divetia, learned APP has contested this petition and has submitted that the complaint lodged by the petitioner is not genuine and it has been lodged with a view to creating evidence in his favour. He has relied upon the statement given by driver Bendubhai Thuliyabhai Dhamodiya before the forest authorities. Mr. Trimizi has, however, submitted that the said driver was severely beaten and was compelled to give the said statement. He submitted that the very driver has made an affidavit on 7th May, 1998 before this Court which falsifies the statement recorded by the forest authorities. Be it noted that the affidavit made on 7th May, 1998 is in English which obviously cannot be an affidavit made by said Bendubhai. If at all it has been prepared on instructions of said Bendubhai Dhamodiya, the fact is not disclosed anywhere in affidavit. It is, therefore, expedient that the respondent no. 2 shall decide the application for interim release of the vehicle made by the petitioner on 23rd September, 1997, taking into consideration the evidence on record, as expeditiously as possible. It is therefore directed that respondent no. 2 shall decide the application dated 23rd September, 1997 made by the petitioner in accordance with law within a period of 4 weeks from today.

5. In the event, respondent no. 2 fails to dispose of the application dated 23rd September, 1997 within four weeks, as directed hereinabove, the truck belonging to

the petitioner bearing registration No. DN-09-8431 seized on 29th August, 1997 and lying in the custody of respondent no. 2 shall be released on petitioner's furnishing security to the satisfaction of respondent no. 2 for sum of Rs. 50,000/=-, on following terms and conditions :-

- (i) Vehicle shall not be transferred in any manner whatsoever nor possession thereof will be parted without express, written permission of the concerned Deputy Conservator of Forests.
- (ii) The vehicle in question shall be maintained in road-worthy condition till the final order is passed.
- (iii) The truck in question shall be produced before the second respondent as and when called upon to do so.
- (iv) In the event of the confiscation order being made by the respondent no.2 the petitioner shall surrender the truck to the respondent no. 2 within fifteen days of such order subject to the order that may be made by the appellate Court.
- (v) The petitioner shall not change the engine, chassis or body of the truck or shall not change the appearance of the truck without express permission of the respondent No. 2.
- (vi) Petitioner shall attend the confiscation proceedings before the respondent No. 2 as and when required to do so and shall cooperate in disposal of the said proceedings.

6. The petitioner shall within 5 days from 20th July, 1998 give an undertaking to the Deputy Conservator of Forests to abide by the above terms and conditions. Petition is allowed to the aforesaid extent only. Rule is made absolute. There shall be no order as to costs.

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